IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.11.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

and

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Writ Petitions Nos.11571 to 11591, 11597 to 11625,
12019 to 12030, 12081 to 12090 of 2004

The Director,
Central Electro-Chemical Research Institute,
Karaikudi 630 006. Petitioner in all the W.Ps. 11571 to 11591, 11597 to 11625, 12019 to 12030, 12081 to 12090 of 2004

vs.

1. The Presiding Officer,
Labour Court, Madurai.

2. Alagappapuram Labour Contract
Co-operative Society Ltd.,
R.D. No.136, Central Electro-Chemical
Research Institute,
Karaikudi. 630 006 ... 1 and 2 Respondents in all the Wps in W.P.Nos.11571 to 11591, 11597 to 11625, 12019 to 12030, 12081 to 12090 of 2004

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D. Palanichami ...3rd Respondent in W.P.11571/04
C. Duraikannu ...3rd Respondent in W.P.11572/04
C. Subbiah ...3rd Respondent in W.P.11573/04
C.T. Vellaichamy ...3rd Respondent in W.P.11574/04
V.R. Vellaichami ...3rd Respondent in W.P.11575/04
R.M. Muthukumar ...3rd Respondent in W.P.11576/04
K. Andiappan ...3rd Respondent in W.P.11577/04
S. Karnan ...3rd Respondent in W.P.11578/04
U. Pandi ...3rd Respondent in W.P.11579/04
R.M. Gandhi ...3rd Respondent in W.P.11580/04
A. Muniyandi ...3rd Respondent in W.P.11581/04 and 12029/04

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R. Pandiraj ...3rd Respondent in W.P.11582/04
M. Veerachami ...3rd Respondent in W.P.11583/04
P. Ganesan ...3rd Respondent in W.P.11584/04
A. Murugan ...3rd Respondent in W.P.11585/04
A.L. Selvaraj ...3rd Respondent in W.P.11586/04
R. Lakshmanan ...3rd Respondent in W.P.11587/04
S. Rajendran ...3rd Respondent in W.P.11588/04
S. Karuppiah ...3rd Respondent in W.P.11589/04, 11598/04
K. Raman ...3rd Respondent in W.P.11590/04
R. Krishnan ...3rd Respondent in W.P.11591/04
K.R. Periyasamy ...3rd Respondent in W.P.11597/04
R. Kasi ...3rd Respondent in W.P.11599/04
V. Alagappan ...3rd Respondent in W.P.11600/04
K. Chinnasamy ...3rd Respondent in W.P.11601/04
R. Murugesan ...3rd Respondent in W.P.11602/04
V. Vellaichamy ...3rd Respondent in W.P.11603/04
K. Selvaraj ...3rd Respondent in W.P.11604/04
R.M. Seenivasan ...3rd Respondent in W.P.11605/04
S. Velli ...3rd Respondent in W.P.11606/04

P.S. Subbiah ...3rd Respondent in W.P.11607/04
K. Kumar ...3rd Respondent in W.P.11608/04
K. Subramaniam ...3rd Respondent in W.P.11609/04
R. Pandi ...3rd Respondent in W.P.11610/04
A. T. Kasiviswanthan ...3rd Respondent in W.P.11611/04
R. Pandian ...3rd Respondent in W.P.11612/04
S. Lakshmanan ...3rd Respondent in W.P.11613/04
A. Anandan ...3rd Respondent in W.P.11614/04
V. Velu ...3rd Respondent in W.P.11615/04
S.P. Sethuraman ...3rd Respondent in W.P.11616/04
P. Kutnalingam ...3rd Respondent in W.P.11617/04
A. Adaikan ...3rd Respondent in W.P.11618/04
P. Muthaiah ...3rd Respondent in W.P.11619/04
R. Natesan ...3rd Respondent in W.P.11620/04
M. Muthu Muniyandi ...3rd Respondent in W.P.11621/04
M. Ponnaiah ...3rd Respondent in W.P.11622/04
C. Pandi ...3rd Respondent in W.P.11623/04
S. Ravichandran ...3rd Respondent in W.P.11624/04
L. Muthiah ...3rd Respondent in W.P.11625/04

W.P.No.12019 to 12030 of 2004

A. Mani ...3rd Respondent in W.P.12019/04
S.P. Nachiappan ...3rd Respondent in W.P.12020/04
S. Dhanuskodi ...3rd Respondent in W.P.12021/04
R. Saravanan ...3rd Respondent in W.P.12022/04
T. Durairaj ...3rd Respondent in W.P.12023/04
M. Kalimuthu ...3rd Respondent in W.P.12024/04
M. Veeriah ...3rd Respondent in W.P.12025/04
M. Ramaiah ...3rd Respondent in W.P.12026/04

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S.P. Nagarajan ...3rd Respondent in W.P.12027/04
S.M. Sonaimuthu ...3rd Respondent in W.P.12028/04
A. Ravichandran ...3rd Respondent in W.P.12030/04

W.P.No.12081 to 12090 of 2004

P. Meyappan ...3rd Respondent in W.P.12081/04
G. Syed ...3rd Respondent in W.P.12082/04
S.P. Muthiaiah ...3rd Respondent in W.P.12083/04
S.P.D.Moorthy ...3rd Respondent in W.P.12084/04
S. Saravanan ...3rd Respondent in W.P.12085/04
V. Karuppiah ...3rd Respondent in W.P.12086/04
P.R. Sonaimuthu ...3rd Respondent in W.P.12087/04
L. Shanmugm ...3rd Respondent in W.P.12088/04
M. Alagar ...3rd Respondent in W.P.12089/04
R. Kulandavelu ...3rd Respondent in W.P.12090/04

Writ petition filed under Article 226 of the Constitution of India for the issue of writ of certiorari to call for the records of the first respondent in C.P. No.102 of 1996 C.P.Nos.146/1996, 144/1996,149/1996, 128/1996, 159/1996, 147/1996, 127/1996,124/1996, 123/1996, 117/1996, 125/1996,120/1996,126/1996, 121/1996, 129/1996, 122/1996, 153/1996, 143/1996, 140/1996, 165/1996, 67/2001, 107/1996, 105/1996, 62/2001, 65/2001. 64/2001, 106/1996, 103/1996, 160/1996, 131/1996, 130/1996, 139/1996, 137/1996, 110/1996, 155/1996, 150/1996, 116/1996, 114/1996, 109/1996, 142/1996, 145/1996, 148/1996, 152/1996, 136/1996, 141/1996, 138/1996, 118/1996, 119/1996, 111/1996, 157/1996, 156/1996, 154/1996, 133/1996, 115/1996, 134/1996, 132/1996, 112/1996, 151/1996, 135/1996, 158/1996, 113/1996, 162/1996, 164/1996, 167/1996, 166/1996, 66/2001, 104/1996, 161/1996, 63/2001, 163/1996, 108/1996, respectively dated 28.10.2003 and quash the same.

For Petitioner : Mr.V.T.Gopalan,
in all the petitions Additional Solicitor General, for
M/s. B.Saraswathi

For Respondent 3
in all the petitions: Mr.K.Vasudevan
For Respondent 2 : Mr.M.Hidayathullah

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COMMON ORDER

K.RAVIRAJA PANDIAN, J.

These writ petitions are filed seeking for the relief of issuance of writ of certiorari to call for the records of the first respondent, the Labour Court, Madurai dated 28.10.2003 made in Claim Petitions Nos.102 to 167 of 1996 and 62 to 67 of 2001 making an award under section 33-C(2) of the Industrial Disputes Act for a sum of Rs.81,440/- to each of the claim petitioners in C.Ps.

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Nos.102 to 167 of 1996 and Rs.38,436/- to each of the petitioners in C.Ps. Nos.62 to 67 of 2001 and quash the same.

2. The material facts on which these writ petitions are filed are one and the same. For the sake of convenience, the facts in respect of writ petition No.11571 of 2004, which, in all its terms, is identical to all other cases, is taken as a typical case.

3. The petitioner, the Central Electro-Chemical Research Institute is owned and controlled by the Council of Scientific and Industrial Research (CSIR), New Delhi, a society registered under the Societies Registration Act and established for the purpose of conducting Scientific Research in the field of electro chemicals. The petitioner Institute is situated in Karaikudi. The work of cleaning and sweeping the campus of the petitioner Institute was entrusted to the second respondent - Alagappapuram Labour Contract Co-operative Society Ltd., on contract on the basis of the competitive quotations submitted by it and being extended on mutually agreed terms. The petitioner got itself registered with the competent authority of both the Central and State Governments under the Contract Labour (Regulation and Abolition) Act, 1970. Likewise, the second respondent has also obtained licence under the said Act.

4. It is the further case of the petitioner institute that there is no employer-employee relationship between the petitioner and the persons who have been engaged by the second respondent for carrying out the work entrusted to it, such as, cleaning and sweeping of the campus of the petitioner. It is also the case of the petitioner that the petitioner has no administrative or disciplinary control over the persons engaged by the second respondent for the above said purpose. Number of persons engaged and the terms and conditions under which they were employed were all decided entirely and exclusively by the second respondent society. The petitioner merely pays the contracted amount to the second respondent in lump-sum periodically. The petitioner has no control over the distribution of the amount so paid to the second respondent, among its members. It is the case of the petitioner that the petitioner is not maintaining any roll call. The total number of persons required to accomplish the task and the number of working hours for which they are to be engaged were all decided solely by the second respondent. There are recruitment Rules framed by the Central Government for the purpose of recruiting staff to the petitioner institute which the petitioner is following scrupulously.

5. That being so, a group of 66 persons including the third respondent in writ petition No.11571 of 2004 filed individual claim petitions in C.Ps. Nos.102 to 167 of 1996 under section 33-C(2) of the Industrial Disputes Act, 1947 contending to be permanent employees of the petitioner and claiming equal pay on par with regular employees of the petitioner with effect from December 1988.

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Each of the 66 claimants claimed Rs.81,440/- under the head of salary arrears and leave salary arrears. Likewise, the other six persons who filed C.Ps. Nos.62 to 67 of 2001 claimed a sum of Rs.38,436/- for each one of them under the head of salary arrears for the period from 01.08.1998 to 01.08.1999.

6. Before the Labour Court, the petitioner resisted the claim of the claim petitioners on the ground that the petitioner is not an industry within the meaning of the Industrial Disputes Act; that the claim petitioners were not workmen of the petitioner; that there was no employer-employee relationship between them; that the petitioner had no control or supervision over them; that the claim petitioners were the employees of the second respondent co-operative society and at any rate, the claim petitions were not maintainable in law without adjudication of their right.

7. The Labour Court allowed all the 72 claim petitions as prayed for by the impugned award dated 28.10.2003 directed the petitioner institute to pay a sum of Rs.81,440/- to each of the 66 claimants in C.Ps. Nos.102 to 167 of 1996 and Rs.38,436/- to each of the six claimants in C.Ps. Nos.62 to 67 of 2001. The said award is assailed before this Court by filing these writ petitions.

8. Mr.V.T.Gopalan, learned Additional Solicitor General argued that the award passed by the Labour Court cannot at any stretch of imagination be regarded as an award passed in accordance with law, when the relationship of the petitioner with the claimants as employer-employee has been specifically denied and disputed. Unless or otherwise the right of the claimants to be the employees of the petitioner is adjudicated in their favour, a petition filed under section 33-C(2) cannot be maintained, which aspect of the matter has been lost sight of by the Labour Court. The Labour Court having found that the claimants having placed no materials to show that they are workmen as defined under the Industrial Disputes Act of the petitioner Institute, misdirected itself in granting the award in their favour.

9. However, the learned counsel for the respondents submitted that the petitioner institute called for candidates for the posts of scavengers, gardeners and sweepers in the year 1983. The third respondent was appointed as casual labour and his salary has been paid monthly by the petitioner. The posts of scavengers and gardeners are permanent vacancies in the petitioner institute. The nature of work that are being done is perennial in nature and as such it is an essential service. The petitioner institute is having a farm with an extent of 300 acres and fruits bearing trees are there. The fruits grown in the farm are sold and thereby the petitioner institute is making profit. In addition to that, the petitioner institute is having 150 houses for accommodation of scientists and guest house with 200 rooms. The houses and the guest house are cleaned by the third respondent by scavenging. The over all control including allotment of work vests with the

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administrative officer of the petitioner, but unfortunately, the petitioner management without deploying the regular staff for cleaning of garbage , roads, water drains and residential buildings got the work done by the second respondent. It is further contended that the Central Government issued notification prohibiting employment of the contract labour for sweeping, cleaning the building owned or occupied by the establishment controlled by the respondent. In spite of the notification, the petitioner institute cannot contend that the third respondent was only a contract labour. It was the further contention of the third respondent that the petitioner itself created the second respondent co-operative society and acted as its President and Secretary. As the contractor and the employer are one and the same, it could be deemed that the third respondent was employed by the petitioner itself.

10. It is further contended by the third respondent that in the year 2001 the petitioner institute called for interview and appointed employees on contract basis. Already the workers were working for 15 to 20 years. The petitioner management is switching over from one system to another with a view to deny regular scale of pay to the third respondent on par with the regular employees in violation of the principles of equal pay for equal work. The award is passed by taking into account the real ground situation prevailing in the petitioner institute and requires no interference by this Court.

11. We heard the learned counsel on either side and perused the materials available on record.

12. It is true that the third respondent claimed a sum of Rs.81,440/- in his claim petition as arrears of wages for the period from December 1988 to July 1996, i.e., a sum of Rs.56,640/- and Rs.24,800/- as holiday wages respectively. The said claim was made on the ground that the third respondent was employed as a sweeper in the year 1983 under the petitioner through the second respondent co-operative society. The services of gardener is an inevitable work in the administration of the petitioner. The third respondent is a permanent employee of the petitioner. The petitioner was bound to pay wages and other benefits as admissible to the regular employees. According to the labour dispute laws, those who have served for 240 days in a year should be made permanent and the Government of India have issued various orders to the effect that those who have served for 480 days in two years should be considered as permanent employees and they should be extended all protection under the Labour laws. The petitioner institute being principal employer should extend all the benefits which are extended to the permanent employees of the petitioner. Though the claimant was employed through the second respondent co-operative society, such employment was made only under the order of the petitioner and the second respondent co-operative society has only distributed the wages it had received from the petitioner.

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The petitioner maintained the records like attendance, service registers, documents relating to disbursement of wages which would prove the third respondent was engaged by the petitioner continuously.

13. The said claim has been resisted by the petitioner by filing counter statement. In the counter statement it was contended, inter alia, that sweeping, cleaning, gardening and security works in the petitioner institute have been entrusted to the second respondent on contract basis under an agreement of contract. For the work done by the employees of the second respondent, the second respondent would raise a bill and get payment from the petitioner periodically.

14. The petitioner is not the employer of the claimant. There was no employer-employee relationship between the petitioner institute and claimants. The main object of the petitioner is conducting research activities and not any industrial work. Of-course, it is essential that in all walks of life, sweeping and cleaning must be done to keep the institute and ambience clean, but that would not mean for that purpose, the petitioner cannot have a contract labour system. Simply because the third respondent was doing sweeping and cleaning work in the premises of the petitioner, they cannot ipso facto become the employees of the petitioner. In the claim petition itself it was admitted that the third respondent was employed through the second respondent co-operative society. When there is no direct employment of the third respondent by the petitioner, the third respondent has got no existing right to claim anything from the petitioner and there is genuine and serious dispute regarding employer-employee relationship between the petitioner and the third respondent. Without deciding the vital issue the claimant's claim could not be gone into.

15. On the basis of the pleadings, the Labour Court recorded a finding to the effect that the claimants have not produced the appointment order issued to them by the petitioner. They have not filed the salary certificate or slip issued to them by the petitioner. It also recorded a finding that the petitioner did not produce the attendance sheet for making entry of the claimant in the petitioner institute. The petitioner paid its share of contribution to the provident fund to the employees. Bonus was also paid by the petitioner. Even though there is no document available to prove the contention that the third respondent was appointed in the permanent vacancy and that aspect could not come within the purview of the dispute before the Tribunal and has to be dealt with separately, but has granted the relief as prayed for.

16. We are afraid, such a relief cannot be granted on the face of the finding recorded by the Labour Court.

17. Section 33-C(2) read as under :

33-C Recovery of money due from an employer-

(1) .....

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(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months."

In the Industrial Disputes Act, the word 'workman' is defined as follows :

S. 2(s) - "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person --

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrive capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the power vested in him, functions mainly of a managerial nature.

18. The scope and amplitude of section 33-C(2) has been considered by the apex Court in the case of Municipal Corporation of v. Ganesh Razak, (1995) 1 SCC 235, wherein the Court held in paragraph 12 of its judgment to the effect that 'where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and

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thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under section 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution. The power of the Labour Court under section 33-C(2) extends to interpretation of the award or settlement on which the workman's right rests.

19. The Supreme Court in the case of Chief Superintendent, Government Livestock Farm Hissar v. Ramesh Kumar, (1997) 11 SCC 363, explained the scope and amplitude of section 33-C(2), as follows :

> "We are unable to appreciate how the application of the respondent could be entertained under section 33-C(2) of the Act. The remedy of Section 33-C(2) is available only in those cases where there is no dispute about entitlement of the workman. The remedy of section 33-C(2) cannot be invoked in a case where the entitlement is disputed. In the instant case, the entitlement of the respondent to regular scale was disputed by the appellant and, therefore, it was not a case in which the remedy of section 33-C(2) could be invoked. The proper course for the respondent was to have his entitlement to regular scale determined by a competent Court or Tribunal and in the event of non-payment of the amount payable to him as per his entitlement under such determination he could invoke the remedy under section 33-C(2)."

20. In State of U.P. v. Brijpal Singh, (2005) 8 SCC 58 the apex Court reiterated earlier views to the effect that the right to money or benefit which is sought to be executed under section 33-C (2) must be an existing one, i.e., already adjudicated upon and must arise in course of and in relation to relationship between industrial workman and employer. The difference between a pre-existing right or benefit and one which is considered just and fair is vital. It is not competent for Labour Court exercising jurisdiction under section 33-C(2) to arrogate to itself functions of industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute. Labour Court cannot first decide workman's entitlement and then compute the benefit so adjudicated. It is only when the entitlement has been earlier adjudicated or recognised by the employer, and thereafter for purpose of implementation thereof some ambiguity requires interpretation that power of interpretation is treated as incidental to Labour Court's power under section 33-C(2), like that of executing Court's power to interpret the decree for purposes of its execution. The apex Court further observed that a proceeding under section 33-C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman, is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. The right to the money which is

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sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of an in relation to the relationship between the industrial workman and his employer. It is not competent to the Labour Court exercising jurisdiction under section 33-C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right.

21. The law so enunciated by the Supreme Court, when applied to the facts of the present case, we are of the considered view that the Labour Court has unduly stretched its jurisdiction beyond the powers conferred on it under section 33-C(2) of the Act. The labour Court was very much alive to the fact that the very character of the third respondent as the employee of the petitioner is very much in dispute. Consequently, the claim under section 33-C(2) of the Act cannot be gone into unless the entitlement of the third respondent is crystalised by adjudication or recognised by the petitioner-employer. As declared by the apex Court in the case laws cited supra, the power of the Labour Court under section 33-C(2) is akin to the executing Court, and can compute the relief on the crystalised entitlement.

22. The Labour Court in paragraph 87 of the award recorded as follows :

> "Here, the contention of the petitioner is that they have been appointed on permanent vacancies, even though no document is available to prove that contention. No doubt that aspect will not come within the claim petition. It is a separate aspect to be dealt in an industrial dispute. Considering the right that the petitioners have already received the monetary benefits from the respondent research institute. It is for the amount due or for the balance of there is inexistence for the petitioners to receive the due for them from the respondent research institute."

23. From the above finding it is evident that the Labour Court has come to the conclusion that the claim of the claim petitioners that they are permanent employees has to be adjudicated separately. Having come to such a conclusion rightly, the Labour Court should not have ventured to grant the benefit under section 33-C(2) when the entitlement of such a benefit is yet to be crystalised. The award of the Labour Court is beyond the scope of section 33-C(2) and cannot withstand the judicial review and liable to be set aside.

24. The learned Additional Solicitor General submitted that another group of persons who were similarly placed approached the Central Administrative Tribunal for regularisation of their service on the very same set of facts, which have been agitated by the claimants in these cases and that has been found favour by the CAT.

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However, a Division Bench of this Court has set aside the order passed by CAT in W.P. Nos.10923 of 1999.

25. We went through the judgment, which, in our view, does not in any way advance the case of neither of the parties, because the relief sought for in these writ petitions and the relief sought for in that writ petition are totally different to each other.

26. For the reasons discussed above, the writ petitions are allowed as prayed for. No costs. The connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

mf

To

1. The Presiding Officer,
Labour Court,
Chennai.

2. The Director,
Central Electro-Chemical Research Institute,
Karaikudi 630 006.

1 cc to Mr.K. Vasudevan, SR. 68560
2 ccs to M/s. B. Saraswathi, Sr. 68371

Writ Petitions Nos.11571 to 11591,
11597 to 11625, 12019 to 12030,
and 12081 to 12090 of 2004

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